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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,997	12/15/2003	John J. Simone	JJS-101A	2968

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EXAMINER


NOVOSAD, CHRISTOPHER J

ART UNIT PAPER NUMBER

3671

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 Office Action Summary	Application No.	Applicant(s)	
	10/735,997	SIMONE, JOHN J.	
	Examiner	Art Unit	
	Christopher J. Novosad	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/15/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the handle located on the first wall panel or the second wall panel must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 7 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. Specifically, claim 7 is identical to claim 6 from which it depends.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 7, 13-16 and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In lines 1 and 2 of claims 6 and 7, the recitation “about 150 degrees and 170 degrees” is indefinite since it is unclear what is being claimed and should be corrected to --between about 150 degrees and 170 degrees--.

Claim 7 is indefinite since it is identical to claim 6 (as noted above) and therefore redundant.

In claim 13, no period is present at the end of the claim and it is therefore unclear as to where the claim is supposed to end.

In claim 14, line 2, the recitation “said back” lacks proper antecedent basis and should be corrected to --said back panel--.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 13, 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollenberg alone.

With respect to claim 1, Figs. 16 and 17 of Hollenberg show a scoop (Fig. 16) for use on non-horizontal work surfaces, which comprises:

(a.) a first base panel 235 and a second base panel 236, each of the first 235 and second 236 base panels having a front (unnumbered), a back (unnumbered) and two sides (unnumbered), the first base panel 235 and the second base panel 236 being connected to one another along a side 238 of each to establish a seam 238;

(b.) a first wall panel 209 and a second wall panel 214, the first wall panel 209 being connected to the first base panel 235 on a side (unnumbered) opposite the seam (unnumbered), the second wall panel 214 being connected to the second base panel 236 on a side (unnumbered) opposite the seam 238; and

(c.) a back panel 211,222 (Fig. 17), the back panel 211,222 (Fig. 17) being connected to the backs (unnumbered) of the first 235 and second 236 base panels.

With respect to claim 2, the first base panel 235 and the second base panel 236 are rectangular with lengths (unnumbered) that are greater than their widths (unnumbered), the lengths (unnumbered) running along the seam 236.

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As to claim 3, the scoop (Fig. 16) further includes:

(d.) a handle 242 located on at least one of the back panel, the first wall panel and the second wall panel 214.

Regarding claim 9, the handle 242 is located on at least one of the first wall panel and the second wall panel 214.

With respect to claim 10, the first base panel 235, the second base panel 236, the first wall panel 209 and the second wall panel 214 are all formed from a single integrated piece (note Fig. 17).

As to claim 13, the first wall panel 209 and the second wall panel 214 are each indirectly connected to the back panel 211,222.

Regarding claim 14, the first base panel 235, the second base panel 236, the first wall panel 209, the second wall panel 214 and the back panel 211,222 are made of a single piece of material (note Fig. 17).

Alternatively, with respect to claim 1, Fig. 23 of Hollenberg show a scoop (Fig. 23) for use on non-horizontal work surfaces, which comprises:

(a.) a first base panel 347 and a second base panel 350, each of the first 347 and second 350 base panels having a front (unnumbered), a back (unnumbered) and two sides (unnumbered), the first base panel 347 and the second base panel 350 being connected to one another along a side (unnumbered) of each to establish a seam (unnumbered);

(b.) a first wall panel 335 and a second wall panel 334, the first wall panel 335 being connected to the first base panel 347 on a side 353 opposite the seam (unnumbered), the second

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wall panel 334 being connected to the second base panel 350 on a side (unnumbered) opposite the seam (unnumbered); and

(c.) a back panel 338,339, the back panel 338,339 being connected to the backs (unnumbered) of the first 347 and second 350 base panels.

As to claim 3, the scoop (Fig. 23) further includes:

(d.) a handle 350-352,358 located on at least one of the back panel 338,339, the first wall panel 335 and the second wall panel 334.

With respect to claim 8, the handle 350-352,358 is located on the back panel 338,339.

As to claim 9, the handle 350-352,358 is located on at least one of the first wall panel 335 and the second wall panel 334.

Regarding claim 17, the handle 350-352,358 is located on an outside surface (unnumbered) of the back panel 338,339.

With respect to claim 10, the first base panel 347, the second base panel 350, the first wall panel 335 and the second wall panel 334 are all formed from a single integrated piece.

As to claim 13, the first wall panel 335 and the second wall panel 334 are each connected to the back panel 338,339.

Regarding claim 14, the first base panel 347, the second base panel 350, the first wall panel 335, the second wall panel 334 and the back panel 338,339 are made of a single piece of material.

The claims distinguish over Hollenberg in requiring (1) a first angle measured perpendicular to the seam and formed by the first and second panels to be about 120 degrees to about 170 degrees (as required in claim 1); (2) the first wall panel to be connected to the second

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wall panel on a side opposite the seam at a second angle of about 120 degrees to about 170 degrees (as required in claim 1); (3) the second wall panel to be connected to the second base panel on a side opposite the seam and at a third angle of about 120 degrees to about 170 degrees (as required in claim 1); (4) the first angle to be between about 150 degrees and 170 degrees (as required in claims 4, 6 and 7); and (5) the second angle and the third angle to each be about 120 degrees to about 150 degrees (as required in claims 5-7).

The selection of the specific angle range noted above for the first, second and third angles merely represent an obvious engineering design choice to one of ordinary skill in the art at the time the invention was made for optimum scoop performance.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the first, second and third angles of Hollenberg in the ranges noted for the reason noted.

Claims 11, 15, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollenberg in view of Eichin *et al.*

Hollenberg shows the scoop as noted.

With respect to claim 18, the scoop (Fig. 23) of Hollenberg includes a handle 350-352,358 that is located on an outside surface (unnumbered) of the back panel 338,339.

The claims distinguish over Hollenberg in requiring (1) the scoop to be a metal scoop (as required in claim 11); (2) the single piece of material (that makes up the scoop) to be a metal material (as required in claim 15); and (3) the scoop to be made of aluminum (as required in claim 20).

Eichin *et al.* discloses in col. 3, line 16 "aluminum" for a scoop (Fig. 1).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized aluminum (a metal) as disclosed in Eichin *et al.* for the scoop of Hollenberg for corrosion resistance.

Claims 12, 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollenberg in view of Foos.

Hollenberg shows the scoop as noted.

With respect to claim 19, the scoop (Fig. 23) includes a handle 350-352,358 that is located on an outside surface (unnumbered) of the back panel 338,339.

The claims distinguish over Hollenberg in requiring (1) the scoop to be a plastic scoop (as required in claim 12) and (2) the single piece of material to be a plastic material (as required in claim 16).

Foos discloses a "plastic scoop" in the title thereof.

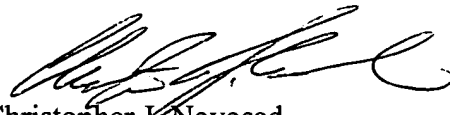
It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized plastic as disclosed in Foos for the scoop of Hollenberg for economy in manufacture.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 703-308-2246. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad
Primary Examiner
Art Unit 3671

March 24, 2005